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MEMORANDUM

TO: Docket Control

FROM: Steven M. Olea
Director
Utilities Division

EA for SMO

DATE: September 7, 2010

RE: IN THE MATTER OF THE APPLICATION OF BROADVIEW NETWORKS, INC. FOR APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE RESOLD LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES (DOCKET NO. T-20565A-09-0563)

Attached is the Staff Report for the above referenced application. The applicant is applying for approval to provide the following services:

- Resold Local Exchange Services

Staff is recommending approval of the application with conditions.

SMO:LLM:kdh

Originator: Lori L. Morrison

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Arizona Corporation Commission

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SERVICE LIST FOR: BROADVIEW NETWORKS, INC.
DOCKET NO. T-20565A-09-0563

Ms. Catherine M. Hannan, Esq.
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STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION

BROADVIEW NETWORKS, INC.
DOCKET NO. T-20565A-09-0563

IN THE MATTER OF THE APPLICATION OF BROADVIEW NETWORKS,
INC. FOR APPROVAL OF A CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE RESOLD LOCAL EXCHANGE
TELECOMMUNICATIONS SERVICES

SEPTEMBER 07, 2010

STAFF ACKNOWLEDGEMENT

The Staff Report for the application of Broadview Networks, Inc., Docket No. T-20565A-09-0563, for approval of a Certificate of Convenience and Necessity to provide Resold Local Exchange Telecommunications Services was the responsibility of the Staff member listed below. Lori Morrison was responsible for the review and analysis of the application.

A handwritten signature in cursive script, reading "Lori Morrison", is positioned above a horizontal line.

Lori Morrison
Utilities Consultant

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1. INTRODUCTION

On December 16, 2009, Broadview Networks, Inc. ("Broadview" or "Applicant") filed an application for a Certificate of Convenience and Necessity ("CC&N") to provide resold local exchange telecommunications services within the State of Arizona. The Applicant petitioned the Arizona Corporation Commission ("Commission") for a determination that its proposed services should be classified as competitive. Broadview was previously granted a CC&N to provide resold long distance telecommunications services on October 7, 2009, in Decision No. 71295.

On June 4, 2010, the Applicant filed an update to the information contained in Section A-18 of its original application. On August 6, 2010, the Applicant filed its Proof of Publication of Notice and an amended application page to correct its response to Section A-17 from its original application.

Staff's review of this application addresses the overall fitness of the Applicant to receive a CC&N to provide resold local exchange telecommunications services. Staff's review considers whether the Applicant's services should be classified as competitive and whether the Applicant's proposed rates are just and reasonable.

1.1 Technical Capability to Provide the Requested Services

Headquartered in Rye Brook, New York, Broadview is a privately held company founded in 1996 as a telecommunications solutions provider for business customers. The Applicant offers to provide voice, data, voice over internet protocol ("VoIP") and network security services as well as hardware to its customers.

The Applicant proposes to provide resold local exchange services to business customers in Arizona. Broadview has indicated that no employees will be located in Arizona. The Applicant maintains a large customer care department at multiple locations to ensure continuous service in the event a single location is taken off-line for a limited period of time. These locations include the Applicant's main headquarters location in Rye Brook, New York, as well as offices in King of Prussia, Pennsylvania and Quincy, Massachusetts. Customer service assistance is available twenty-four (24) hours per day, seven (7) days a week to handle all customer concerns, complaints and repair inquiries.

In its application and in an update filed June 4, 2010, Broadview indicated that it is currently authorized to provide and currently provides resold local telecommunications services in forty-four (44) states¹ and the District of Colombia and has applications pending in Arkansas, Louisiana and Oklahoma. In addition, the Applicant indicated in response to Staff's Data

¹ Alabama, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

Request LM 1.3 that its six top officers possess a combined 135 years experience in the telecommunications industry.

Based on the above information, Staff believes the Applicant possesses the technical capabilities to provide the services it is requesting the authority to provide.

1.2 Financial Capability to Provide the Requested Services

The Applicant provided unaudited financial statements for the twelve months ending December 31, 2008 and twelve months ending December 31, 2009. The financial statements ending December 31, 2008 list total assets of \$359,028; total equity of \$424,294; and a net loss of \$31,786. The financial statements ending December 31, 2009 list total assets of \$324,505; total equity of \$401,316; and a net loss of \$11,699. The Applicant did not provide notes related to the financial statements.

The Applicant states in its proposed Local Exchange Services Tariff No. 2 (Sections 3.4.3 and 3.4.4(b)) that it may collect advances, deposits and prepayments from its resold local exchange customers. The Commission's current performance bond or irrevocable sight draft Letter of Credit ("performance bond/ISDLC") requirements are \$10,000 for resold long distance (for those resellers who collect deposits, advances or prepayments), \$25,000 for resold local exchange, \$100,000 for facilities-based long distance and \$100,000 for facilities-based local exchange services. Based on the services the Applicant is requesting authority to provide, the minimum recommended performance bond or ISDLC should be \$25,000. The performance bond or ISDLC coverage needs to increase in increments equal to 50 percent of the total minimum performance bond or ISDLC amount when the total amount of the advances is within 10 percent of the total minimum performance bond or ISDLC amount. Thus, the bond or ISDLC amount should be increased in increments of \$12,500 when the total amount of advances is within \$2,500 of the bond or ISDLC amount.

Staff recommends that the Applicant procure either a performance bond or an ISDLC equal to \$25,000. If the Applicant desires to discontinue service, it must file an Application with the Commission pursuant to A.A.C. R14-2-1107. Additionally, the Applicant must notify each of its customers and the Commission 60 days prior to filing an Application to discontinue service. Failure to meet this requirement should result in forfeiture of the Applicant's performance bond or ISDLC.

Staff recommends that proof of the above-mentioned performance bond or ISDLC be docketed within 90 days of the effective date of a Decision in this matter or 10 days before the first customer is served, whichever comes earlier. The original performance bond or ISDLC should be filed with the Commission's Business Office and 13 copies of the performance bond or ISDLC be filed with Docket Control, as a compliance item in this docket. The Commission may draw on the performance bond or ISDLC on behalf of and for the sole benefit of the Company's customers, if the Commission finds, in its discretion, that the Company is in default of its obligations arising from its Certificate. The Commission may use the bond or ISDLC

funds, as appropriate, to protect the Company's customers and the public interest and take any and all actions the Commission deems necessary, in its discretion, including, but not limited to, returning prepayments or deposits collected from the Company's customers.

1.3 Establishing Rates and Charges

The Applicant would initially be providing service in areas where an incumbent local exchange carrier ("ILEC"), along with various competitive local exchange carriers ("CLECs") and interexchange carriers ("IXCs") are providing telephone service. Therefore, the Applicant would have to compete with those providers in order to obtain subscribers to its services. The Applicant would be a new entrant and would face competition from both an incumbent provider and other competitive providers in offering service to its potential customers. Therefore, the Applicant would generally not be able to exert market power. Thus, the competitive process should result in rates that are just and reasonable.

Both an initial rate (the actual rate to be charged) and a maximum rate must be listed for each competitive service offered, provided that the rate for the service is not less than the Applicant's total service long-run incremental cost of providing the service, pursuant to A.A.C. R14-2-1109.

The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the Applicant indicating that its fair value rate base is zero. Accordingly, the Applicant's fair value rate base is too small to be useful in a fair value analysis. In addition, the rate to be ultimately charged by the Applicant will be heavily influenced by the market. In its application, the Applicant submitted a tariff reflecting the actual rates that it will be charging for its resold local exchange services. Staff has reviewed these rates and believes they are comparable to the rates charged by competitive local carriers, local incumbent carriers and major long distance carriers operating in the State of Arizona. Therefore, while Staff considered the fair value rate base information submitted by the Applicant, the fair value rate base information provided should not be given substantial weight in this analysis.

2. LOCAL EXCHANGE CARRIER SPECIFIC ISSUES

Issues related to the provision of that Local Exchange service are discussed below.

2.1 Number Portability

The Commission has adopted rules to address number portability in a competitive telecommunications services market. Local exchange competition may not be vigorous if customers, especially business customers, must change their telephone numbers to take advantage of a competitive local exchange carrier's service offerings. Consistent with federal

laws, federal rules and A.A.C. R14-2-1308(A), the Applicant shall make number portability available to facilitate the ability of a customer to switch between authorized local carriers within a given wire center without changing their telephone number and without impairment to quality, functionality, reliability or convenience of use.

2.2 Provision of Basic Telephone Service and Universal Service

The Commission has adopted rules to address universal telephone service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund ("AUSF"). The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204(B).

2.3 Quality of Service

Staff believes that the Applicant should be ordered to abide by the quality of service standards that were approved by the Commission for Qwest (fka USWC) in Docket No. T-01051B-93-0183 (Decision No. 59421). Because the penalties developed in that docket were initiated because Qwest's level of service was not satisfactory and the Applicant does not have a similar history of service quality problems, Staff does not recommend that those penalties apply to the Applicant. In the competitive market that the Applicant wishes to enter, the Applicant generally will have no market power and will be forced to provide a satisfactory level of service or risk losing its customers. Therefore, Staff believes that it is unnecessary to subject the Applicant to those penalties at this time.

2.4 Access to Alternative Local Exchange Providers

Staff expects that there will be new entrant providers of local exchange service who will install the plant necessary to provide telephone service to, for example, a residential subdivision or an industrial park much like existing local exchange companies do today. There may be areas where the Applicant installs the only local exchange service facilities. In the interest of providing competitive alternatives to the Applicant's local exchange service customers, Staff recommends that the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve such areas. This way, an alternative local exchange service provider may serve a customer if the customer so desires. Access to other providers should be provided pursuant to the provisions of the 1996 Telecommunications Act, the rules promulgated there under and Commission rules on interconnection and unbundling.

2.5 911 Service

The Commission has adopted rules to address 911 and E911 services in a competitive telecommunications services market. The Applicant has certified that in accordance with A.A.C. R14-2-1201(6)(d) and Federal Communications Commission 47 CFR Sections 64.3001 and

64.3002, it will provide all customers with 911 and E911 service, where available, or will coordinate with ILECs and emergency service providers to provide 911 and E911 service.

2.6 Custom Local Area Signaling Service

Consistent with past Commission decisions, the Applicant may offer Caller ID provided that per call and line blocking, with the capability to toggle between blocking and unblocking the transmission of the telephone number, are provided as options to which customers could subscribe with no charge. Also, Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated, indicating that the number has been blocked, must be offered.

3. REVIEW OF COMPLAINT INFORMATION

The Applicant indicated it has not had an Application for service denied nor authority to provide service revoked in any state. Staff did not find any instances of denied applications or revocation of authority to provide service. The Applicant indicated that none of its officers, directors or partners have been or are currently involved any formal or informal complaints proceedings pending before any state or federal regulatory commission, administrative agency or law enforcement agency. Staff has found no instances of any formal or informal complaint proceedings involving the Applicant or any of its officers, directors or managers. The Applicant also indicated that none of its officers, directors or partners have been in or are currently involved in any civil or criminal investigations, or had judgments levied by any administrative or regulatory agency, or been convicted of any criminal acts in the past ten (10) years. Staff has found no instances of any civil or criminal investigations, judgments levied by any administrative or regulatory agency, or criminal convictions within the last ten (10) years involving the Applicant or any of its officers, directors or managers.

In its application, Broadview indicated that the Secretary of State in Illinois revoked its authority as a foreign corporation due to the Company's failure to file an annual report and pay an annual franchise tax. As a result, the Illinois Commerce Commission ("ICC") cancelled the Applicant's authority to provide telecommunications services. A search of the ICC's website found that on July 10, 2002, the ICC issued an Order which cancelled and revoked Broadview's authority to provide telecommunications services due to the company's failure to maintain its corporate status with the Illinois Secretary of State. On June 25, 2008, the ICC issued an Order granting Broadview authority to provide resold interexchange telecommunications services. Broadview was initially granted Certificates of Service Authority on September 7, 2000. In addition, there were no formal or informal consumer complaints filed against Broadview prior to its revocation nor have there been any formal or informal consumer complaints filed against the Company with the ICC since its reinstatement.

The Applicant is currently providing local exchange services in 44 states and the District of Columbia. Staff contacted five (5) state commissions² in the jurisdictions where the Applicant's affiliates are currently authorized to provide service to verify certification to provide service and to inquire about complaints. All five states advised that the Applicant was indeed authorized to provide service in their jurisdiction and that no complaints had been received about the Applicant or its affiliates. The Corporations Division has indicated that Broadview is in good standing. The Consumer Services Section reports no complaints have been filed in Arizona from January 1, 2006 to December 30, 2009. A search of the Federal Communications Commission's ("FCC") website found that there have been two (2) informal complaint proceedings³ involving the Applicant in which the FCC determined that Broadview's actions did result in an unauthorized change in the Complainants' telecommunications service providers. Both complaints were resolved by changing the Complainants' services back to their original service providers and the removal of all charges incurred for service for the first thirty (30) days after the alleged unauthorized change.

4. COMPETITIVE SERVICES ANALYSIS FOR LOCAL EXCHANGE SERVICES

The Applicant has petitioned the Commission for a determination that the services it is seeking to provide should be classified as competitive.

4.1 A DESCRIPTION OF THE GENERAL ECONOMIC CONDITIONS THAT EXIST WHICH MAKES THE RELEVANT MARKET FOR THE SERVICE ONE THAT IS COMPETITIVE.

The local exchange market that the Applicant seeks to enter is one in which a number of new CLECs have been authorized to provide local exchange service. Nevertheless, ILECs hold a virtual monopoly in the local exchange service market. At locations where ILECs provide local exchange service, the Applicant will be entering the market as an alternative provider of local exchange service and, as such, the Applicant will have to compete with those companies in order to obtain customers. In areas where ILECs do not serve customers, the Applicant may have to convince developers to allow it to provide service to their developments.

4.2 THE NUMBER OF ALTERNATIVE PROVIDERS OF THE SERVICE.

Qwest and various independent LECs are the primary providers of local exchange service in the State. Several CLECs and local exchange resellers are also providing local exchange service.

² California, Colorado, Florida, Texas and Washington.

³ Informal Complaint No. IC 08-S0294189, filed August 25, 2008 and resolved in the Order, released February 27, 2009 in DA 09-512 and Informal Complaint No. IC 09-S0295147, filed January 26, 2009 and resolved in the Order released February 27, 2009, DA 09-481.

4.3 THE ESTIMATED MARKET SHARE HELD BY EACH ALTERNATIVE PROVIDER OF THE SERVICE.

Since Qwest and the independent LECs are the primary providers of local exchange service in the State, they have a large share of the market. Since the CLEC and local exchange resellers have only recently been authorized to offer service, they have limited market share.

4.4 THE NAMES AND ADDRESSES OF ANY ALTERNATIVE PROVIDERS OF THE SERVICE THAT ARE ALSO AFFILIATES OF THE TELECOMMUNICATIONS APPLICANT, AS DEFINED IN A.A.C. R14-2-801.

None.

4.5 THE ABILITY OF ALTERNATIVE PROVIDERS TO MAKE FUNCTIONALLY EQUIVALENT OR SUBSTITUTE SERVICES READILY AVAILABLE AT COMPETITIVE RATES, TERMS AND CONDITIONS.

ILECs have the ability to offer the same services that the Applicant has requested in their respective service territories. Similarly, many of the CLECs and local exchange resellers also offer substantially similar services.

4.6 OTHER INDICATORS OF MARKET POWER, WHICH MAY INCLUDE GROWTH AND SHIFTS IN MARKET SHARE, EASE OF ENTRY AND EXIT, AND ANY AFFILIATION BETWEEN AND AMONG ALTERNATIVE PROVIDERS OF THE SERVICE(S).

The local exchange service market is:

- a. One in which ILECs own networks that reach nearly every residence and business in their service territories and which provide them with a virtual monopoly over local exchange service. New entrants are also beginning to enter this market.
- b. One in which new entrants will be dependent upon ILECs:
 - 1. To terminate traffic to customers.
 - 2. To provide essential local exchange service elements until the entrant's own network has been built.
 - 3. For interconnection.

- c. One in which ILECs have had an existing relationship with their customers that the new entrants will have to overcome if they want to compete in the market and one in which new entrants do not have a long history with any customers.
- d. One in which most customers have few, if any, choices since there is generally only one provider of local exchange service in each service territory.
- e. One in which the Applicant will not have the capability to adversely affect prices or restrict output to the detriment of telephone service subscribers.

5. RECOMMENDATIONS

The following sections contain the Staff recommendations on the application for a CC&N and the Applicant's petition for a Commission determination that its proposed services should be classified as competitive.

5.1 *Recommendations on the Application for a CC&N*

Staff recommends that the Applicant's application for a CC&N to provide intrastate telecommunications services, as listed in this Report, be granted. In addition, Staff recommends:

1. That the Applicant complies with all Commission Rules, Orders and other requirements relevant to the provision of intrastate telecommunications services;
2. That the Applicant complies with Federal laws, Federal rules and A.A.C. R14-2-1308(A), to make number portability available;
3. That the Applicant abides by the quality of service standards that were approved by the Commission for Qwest in Docket No. T-01051B-93-0183;
4. That the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve areas where the Applicant is the only provider of local exchange service facilities;
5. That the Applicant provides all customers with 911 and E911 service, where available, or will coordinate with ILECs and emergency service providers to provide 911 and E911 service in accordance with A.A.C. R14-2-120(6)(d) and Federal Communications Commission 47 CFR Sections 64.3001 and 64.3002;
6. That the Applicant be required to notify the Commission immediately upon changes to the Applicant's name, address or telephone number;

7. That the Applicant cooperates with Commission investigations including, but not limited to customer complaints;
8. The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the Applicant and has determined that its fair value rate base is zero. Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to other competitive local carriers, local incumbent carriers and major long distance companies offering service in Arizona and comparable to the rates the Applicant charges in other jurisdictions. The rate to be ultimately charged by the Applicant will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the Applicant, the fair value information provided was not given substantial weight in this analysis;
9. In the event the Applicant requests to discontinue and/or abandon its service are, it must provide notice to both the Commission and its customers. Such notice(s) shall be in accordance with A.A.C. R14-2-1107;
10. That the Applicant offer Caller ID with the capability to toggle between blocking and unblocking the transmission of the telephone number at no charge;
11. That the Applicant offer Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated;
12. Staff recommends that the Commission authorize the Applicant to discount its rates and service charges to the marginal cost of providing the services.

Staff further recommends that the Applicant be ordered to comply with the following. If it does not do so, the Applicant's CC&N shall be null and void after due process.

1. The Applicant shall docket conforming tariffs for each service within its CC&N within 365 days from the effective date of a decision in this matter or 30 days prior to providing service, whichever comes first. The tariffs submitted shall coincide with the application.
2. The Applicant shall:
 - a. Procure a performance bond or ISDLC in the amount of \$25,000. The performance bond or ISDLC coverage should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected for Applicant's customers. The bond or ISDLC should be increased in increments of \$12,500. This increase should occur when the total amount of advances, deposits, and/or prepayments is within \$2,500 of the total

\$25,000 bond or ISDLOC amount.

- b. Docket proof of the original performance bond or ISDLC with the Commission's Business Office and 13 copies of the performance bond or ISDLC with Docket Control, as a compliance item in this docket, within 90 days of the effective date of a Decision in this matter or 10 days before the first customer is served, whichever comes earlier. The performance bond or ISDLC must remain in effect until further order of the Commission. The Commission may draw on the performance bond or ISDLC on behalf of and for the sole benefit of the Company's customers, if the Commission finds, in its discretion, that the Company is in default of its obligations arising from its Certificate. The Commission may use the performance bond or ISDLC funds, as appropriate, to protect the Company's customers and the public interest and take any and all actions the Commission deems necessary, in its discretion, including, but not limited to returning prepayments or deposits collected from the Company's customers.
 - c. As a compliance filing, the Company shall notify the Commission that it has started providing service in Arizona within 30 days of the first customer being served.
3. The Applicant shall abide by the Commission's adopted rules that address Universal Service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications services providers that interconnect into the public switched network shall provide funding for the AUSF. The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204(B).

5.2 *Recommendation on the Applicant's Petition to Have Proposed Services Classified as Competitive*

Staff believes that the Applicant's proposed services should be classified as competitive. There are alternatives to the Applicant's services. The Applicant will have to convince customers to purchase its services, and the Applicant has no ability to adversely affect the local exchange service markets. Therefore, the Applicant currently has no market power in the local exchange service markets where alternative providers of telecommunications services exist. Staff therefore recommends that the Applicant's proposed services be classified as competitive.